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LAURA SWANSON, STAFF DIRECTOR
LILA NIEVES-LEE, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

March 30, 2023

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chair Gensler:

We write regarding recent news reports of executives at Silicon Valley Bank (SVB) selling millions of dollars' worth of company stock in the days and months leading up to SVB's failure. Our capital markets are based upon the ironclad trust that corporate insiders act in the best interest of their shareholders, and not in their own self-interest. Addressing breaches of that trust is of paramount importance. The magnitude and timing of stock sales at SVB raise serious questions, and we ask for your prompt examination of these sales.

Earlier this month, SVB, the nation's 16th largest bank, was closed by the California Department of Financial Protection and Innovation and the Federal Deposit Insurance Corporation (FDIC) was appointed as receiver of the bank.¹ Days before the collapse of the 40 year old bank, the Chief Executive Officer of SVB Financial Group (SVB Group), the holding company of SVB, sold nearly \$3.6 million of SVB Group stock.² On that same day—February 27—the Chief Financial Officer of SVB Group sold 2,000 shares of company stock at \$287.59 per share, netting over \$500,000.³ Both executives indicated their sales were pursuant to Rule 10b5-1 trading plans; however, those are new plans, having been entered into only in late January 2023.⁴

¹ Silicon Valley Bank Fails After Run on Deposits, The New York Times (March 10, 2023) (<https://www.nytimes.com/2023/03/10/business/silicon-valley-bank-stock.html>).

² *SVB's Execs Sold \$84 Million in Stock Over the Past Two 2 Years, Stoking Outrage Over Insider Trading Plans*, CNBC (March 14, 2023) (<https://www.cnbc.com/2023/03/14/svb-execs-sold-84-million-of-the-banks-stock-over-the-past-2-years.html>); *SVB's Chief Sold \$3.6 Million in Stock Days Before Bank Failure*, Bloomberg (March 10, 2023); See also *Securities and Exchange Commission*, Form 4 (February 27, 2023) (<https://www.sec.gov/Archives/edgar/data/719739/000156218023002056/xslF345X03/primarydocument.xml>).

³ *Securities and Exchange Commission*, Form 4 (February 27, 2023) (<https://www.sec.gov/Archives/edgar/data/719739/000156218023002059/xslF345X03/primarydocument.xml>); See also *Regulators Are Looking Harder at Insider Stock Sales by SVB Execs (Which Really Added Up)*, TechCrunch (March 14, 2023)

(<https://techcrunch.com/2023/03/14/regulators-are-taking-a-harder-look-at-those-insider-stock-sales-by-svb-execs/>).

⁴ *SVB's Chief Sold \$3.6 Million in Stock Days Before Bank Failure*, Bloomberg (March 10, 2023). See also *SEC Form 4* – Gregory Becker (entered into effective January 26, 2023) (<https://www.sec.gov/Archives/edgar/data/719739/000156218023002056/xslF345X03/primarydocument.xml>) and

On March 9, the day before the FDIC assumed receivership of the bank, SVB stock closed at \$106.04. In addition to those recent sales, in the two years preceding the bank's collapse, SVB Group's CEO reportedly sold nearly \$30 million in company stock,⁵ and since 2021, several of the bank's top executives collectively sold tens of millions of dollars of company stock.⁶

The timing of the executives' stock sales in 2023, including the establishment of Rule 10b5-1 trading plans only one month prior to the stock sales that occurred the week before SVB's demise, is particularly problematic in light of the Securities and Exchange Commission's (SEC) December 2022 adoption of amendments to Rule 10b5-1.⁷ Those amendments are designed to boost investor protection and help shareholders understand when and how insiders are trading in company securities. Notably, the updates become effective on April 1, 2023, and require that executive and director trading plans build in a 90-day cooling-off period between a plan's adoption and commencement of trading under the plan.⁸

By entering into their trading plans prior to the effective date of the Rule 10b5-1 amendments, the SVB Group CEO and CFO avoided that cooling-off period, which is intended "to provide a separation in time between the adoption of the plan and the commencement of trading under the plan so as to minimize the ability of an insider to benefit from any material nonpublic information."⁹ In addition, like any other executive using a 10b5-1 plan, SVB's executives are required to have entered into their trading plans in good faith and "not aware of any material nonpublic information about the security."¹⁰

SVB's financial distress emerged in 2022, as its bond portfolio showed large unrealized losses and its deposit base began to decline.¹¹ Its balance sheet and liquidity position worsened in early 2023, and SVB feared a credit rating downgrade. The bank began working to raise capital to

SEC Form 4 – Daniel Beck (entered into effective January 24, 2023) (<https://www.sec.gov/Archives/edgar/data/719739/000156218023002059/xs1F345X03/primarydocument.xml>).

⁵ *SVB's Execs Sold \$84 Million in Stock Over the Past Two 2 Years, Stoking Outrage Over Insider Trading Plans*, CNBC (March 14, 2023) (<https://www.cnbc.com/2023/03/14/svb-execs-sold-84-million-of-the-banks-stock-over-the-past-2-years.html>).

⁶ *SVB's Execs Sold \$84 Million in Stock Over the Past Two 2 Years, Stoking Outrage Over Insider Trading Plans*, CNBC (March 14, 2023) (<https://www.cnbc.com/2023/03/14/svb-execs-sold-84-million-of-the-banks-stock-over-the-past-2-years.html>); *US Justice Department Probes Silicon Valley Bank Collapse*, Financial Times (March 14, 2023) (<https://www.ft.com/content/298b558d-b599-4eb6-9c85-3c6b124f47ef>).

⁷ *SEC Adopts Amendments to Modernize Rule 105b-1 Insider Trading Plans and Related Disclosures*, Securities and Exchange Commission (December 14, 2022) (<https://www.sec.gov/news/press-release/2022-222>). See 17 C.F.R. §§ 229, 232, 240, 249.

⁸ 17 C.F.R. § 240.10b5-1(c)(ii)(B)(1)(i) (2023).

⁹ *Insider Trading Arrangements and Related Disclosures*, Securities and Exchange Commission (17 C.F.R. §§ 229, 232, 240, 249) (<https://www.sec.gov/rules/final/2022/33-11138.pdf>).

¹⁰ 17 C.F.R. § 240.10b5-1(c)(ii)(C).

¹¹ *Rising Interest Rates Hit Banks' Bond Holdings*, Wall Street Journal (November 11, 2022) (<https://www.wsj.com/articles/rising-interest-rates-hit-banks-bond-holdings-11668123473>); *SVB Tapped Home Loan Bank for \$15 Billion in Funding at End of 2022*, Wall Street Journal (March 10, 2023) (<https://www.wsj.com/livecoverage/stock-market-news-today-03-10-2023/card/svb-tapped-home-loan-bank-for-15-billion-in-funding-at-end-of-2022-o818AvXWYMBFgUicgTwp>).

avoid insolvency, but those measures failed on March 8, 2023.¹² Those measures reportedly started taking shape ten days prior, indicating that SVB's financial difficulties had been progressing for some time. The continuing problems at SVB call into question the timeline for the executives' February stock sales and the January trading plans.¹³

The Senate Committee on Banking, Housing, and Urban Affairs began to consider the management failures at SVB and the need for regulatory and supervisory enhancements at a hearing held on March 28, 2023, titled "*Recent Bank Failures and the Federal Regulatory Response*".¹⁴ At that hearing, several Senators expressed concern over the size and timing of the SVB Group executives' stock sales. The questions posed by Committee Members underscore the need for clear guidelines for trading by corporate insiders and for a framework that prevents gaming and abuse.

We believe that given the circumstances of the SVB Group stock sales the SEC must thoroughly review the circumstances of all the recent transactions. In fact, the sharp decline in the stock prices of several financial institutions means broader analysis may be necessary. While we expect the SEC's amendments to Rule 10b5-1 will increase transparency and reduce gaming of stock sales, the SEC must evaluate compliance and enforce violations when appropriate. Trust that our markets operate fairly and efficiently for investors is the bedrock foundation of our financial system. Betrayal of that trust must be addressed to the fullest extent possible. Should regulators require additional tools in order to promote transparency and protect shareholders, we stand ready to work with you on such measures.


Thank you for your prompt attention to this matter.

Sincerely,

¹² *SVB Financial Group Form 8-K*, Securities and Exchange Commission (March 14, 2023) (<https://d18rn0p25nwr6d.cloudfront.net/CIK-0000719739/e30a9ea1-a9bb-4fbd-800a-1ca101c0b41c.pdf>).

¹³ *How Goldman's Plan to Shore Up Silicon Valley Bank Crumbled*, The Wall Street Journal (March 15, 2023) (https://www.wsj.com/articles/how-goldmans-plan-to-shore-up-silicon-valley-bank-crumbled-96bb44bb?st=a7ijfyyl4jgt957&reflink=desktopwebshare_permalink).

¹⁴ *Recent Bank Failures and the Federal Regulatory Response: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs, 118th Cong. (2023)*, (<https://www.banking.senate.gov/hearings/recent-bank-failures-and-the-federal-regulatory-response>).



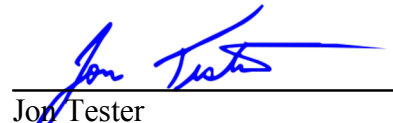
Sherrod Brown
Chairman
Senate Committee on
Banking, Housing, and Urban
Affairs



Jack Reed
United States Senator



Robert Menendez
United States Senator



Jon Tester
United States Senator




Mark R. Warner
United States Senator



Catherine Cortez Masto
United States Senator



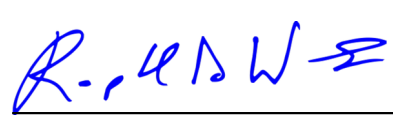
Chris Van Hollen
United States Senator



Tina Smith
United States Senator



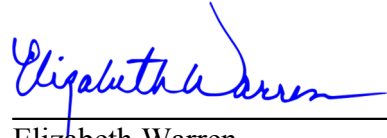
Kyrsten Sinema
United States Senator



Raphael Warnock
United States Senator



John Fetterman
United States Senator



Elizabeth Warren
United States Senator

cc: The Honorable Jerome Powell, Chair, Board of Governors of the Federal Reserve System
The Honorable Michael Barr, Vice Chair for Supervision, Board of Governors of the
Federal Reserve System
The Honorable Martin J. Gruenberg, Chair, Federal Deposit Insurance Corporation
The Honorable Merrick Garland, Attorney General, U.S. Department of Justice